

AN ORDINANCE 2006-06-08-0691

**AUTHORIZING THE EXECUTION OF A CONTRACT WITH PACE BUTLER CORPORATION TO REFURBISH SUITABLE DONATED MOBILE TELEPHONES FOR THE POLICE DEPARTMENT'S VICTIMS ADVOCACY SECTION (VAS) AND TO PURCHASE UNSUITABLE DONATED MOBILE TELEPHONES FROM THE CITY, WITH FUNDS BEING DEPOSITED INTO THE VAS TRUST FUND.**

\* \* \* \* \*

**WHEREAS**, the San Antonio Police Department's Victim Advocacy Section receives donated mobile telephones; and

**WHEREAS**, after being refurbished, suitable donated mobile telephones are distributed to victims of domestic violence; and

**WHEREAS**, unsuitable donated mobile telephones are sold and the funds are used by the Victim's Advocacy Section to provide other services to the victims of domestic violence;

**WHEREAS**, the San Antonio Police Department wishes to contract with Pace Butler Corporation to refurbish suitable donated mobile telephones for the Victims Advocacy Section (VAS) and to purchase unsuitable mobile telephones; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager, or her designee, is hereby authorized to execute a contract with Pace Butler Corporation to refurbish suitable donated mobile telephones for the San Antonio Police Department's Victims Advocacy Section and to purchase unsuitable mobile telephones. A copy of said contract is attached hereto and incorporated herein. The terms and conditions contained in said contract are hereby approved.

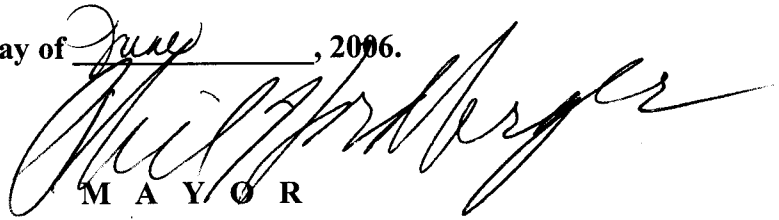
**SECTION 2.** Funds generated by this ordinance are to be deposited into Fund 29611000 (VICTIM'S ADVOCACY TRUST FUND), Internal Order 217000000062 (VICTIM'S

ADVOCACY TRUST FUND), General Ledger 4502220 (Contributions Private Donors Restricted).

**SECTION 3.** The financial allocations in this ordinance are subject to approval by the Director of Finance of the City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific fund numbers, account numbers, cost centers, and internal order numbers as necessary to carry out the purposes of this ordinance.

**SECTION 4.** This ordinance becomes effective ten days after the date of passage.

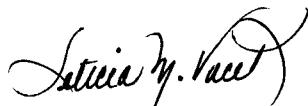
PASSED AND APPROVED this 8<sup>th</sup> day of June, 2006.



M A Y O R

**PHIL HARDBERGER**

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

## **AGREEMENT TO PURCHASE USED MOBILE TELEPHONES**

This agreement is made and entered into by and between the City of San Antonio, Texas, a municipal corporation (CITY), and Pace Butler Corporation, a corporation incorporated under the laws of the State of Oklahoma, (PROVIDER).

**WHEREAS**, the San Antonio Police Department (SAPD) collects used mobile telephones for the purpose of assisting victims of domestic violence; and

**WHEREAS**, CITY wishes to engage PROVIDER to identify those mobile telephones collected by the SAPD which function properly and to purchase those mobile telephones which do not;  
**NOW THEREFORE:**

### **I. TERM**

- 1.1 This contract shall commence on July 1, 2006, and shall expire on June 30, 2007, unless terminated earlier pursuant to the provisions hereof.

### **II. PERFORMANCE**

- 2.1 PROVIDER agrees that, upon receipt of a shipment of mobile telephones from the SAPD, PROVIDER will identify which of the telephones function properly and which do not function properly. PROVIDER shall submit an itemized list of all mobile telephones received by PROVIDER from SAPD and shall identify which of said telephones function properly and which do not within thirty days of receipt of the telephones.
- 2.2 Of those telephones shipped to PROVIDER, PROVIDER will return to the SAPD the number of those telephones which function properly, along with a power adapter for each, that is specified by the SAPD within thirty days of receipt.
- 2.2 PROVIDER agrees to purchase the remainder of the mobile telephones shipped by the SAPD and not returned by PROVIDER at the rates specified in Attachment A.
- 2.3 PROVIDER agrees that it has no exclusive right to provide the aforementioned services to CITY during the term of this contract and that CITY does not guarantee that any minimum number of mobile telephones will be delivered to PROVIDER during the term of this contract.

### **III. CONTRACT BILLING**

- 3.1 PROVIDER agrees to make payment for the mobile telephones it is obligated to pay for within thirty days of receipt of the telephones.
- 3.2 PROVIDER agrees to pay any shipping and handling costs incurred by CITY in shipping mobile telephones to PROVIDER's facility. PROVIDER further agrees to pay any

shipping and handling costs incurred by PROVIDER in returning functioning mobile telephones and corresponding power adapters to CITY.

- 3.3 PROVIDER agrees that the costs of insurance premiums incurred in order to secure the insurance coverage required by Article XII will be the responsibility of PROVIDER.
- 3.4 PROVIDER agrees that PROVIDER will incur all costs associated with completion of the work required by this contract and will not be entitled to any reimbursement for any costs so incurred.

#### **IV. LICENSES AND CERTIFICATIONS; GENERATOR STATUS; CRIMINAL HISTORY AND REGULATORY COMPLIANCE WARRANTY**

- 4.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by PROVIDER. Failure to comply with this requirement may be treated as a default and may result in termination of this contract.
- 4.2 PROVIDER shall become the generator of any and all regulated materials that may be extracted from the cell phones. PROVIDER takes full and complete responsibility for any and all waste materials that may be generated on account of recycling, refurbishing, or managing in any way the units sent to PROVIDER by the SAPD. If characterized as waste, all such materials shall be legally disposed of.
- 4.3 Attachment B (Regulatory Compliance and Criminal History Warranty), which is attached hereto, is fully incorporated into this contract verbatim for all purposes.

#### **V. RECORDS**

- 5.1 PROVIDER shall properly, accurately, and completely maintain all books, documents, papers, accounting, or records pertaining to, or generated as a result of, this contract and shall make such materials available at its offices at all reasonable times, and as often as CITY may deem necessary, until this contract has been terminated and for three years thereafter for the purpose of accounting and audit inspections by CITY and/or any authorized representative of CITY to audit, examine, and make excerpts and/or copies of same.

#### **VI. CONFIDENTIALITY**

- 6.1 PROVIDER shall comply with the confidentiality procedures pertaining to records and other information relating to CITY in accordance with the applicable federal, state, and local laws. This provision shall not be construed as limiting CITY's right of access pursuant to Articles V, VII, and VIII.
- 6.2 Additionally, PROVIDER agrees to ensure that its employees do not disclose to any person, other than to CITY personnel in the course and scope of their employment by

CITY, any information learned from the mobile telephones, except as required by law or court order.

## **VII. TERMINATION**

- 7.1 Either party may terminate this contract in accordance with this article at any time, for any reason, with thirty days' written notice to the non-terminating party. Said notice shall specify the date of termination. All obligations of Articles VII and VIII shall survive termination and/or expiration of this contract.
- 7.2 Upon termination, any and all writings, documents, audiotapes, videotapes, or information, in whatsoever form and character, produced by PROVIDER pursuant to the provisions of this contract shall, if requested or agreed to by CITY, be delivered by PROVIDER to CITY in a timely and expeditious manner, but no less than forty-five calendar days from the date of termination.
- 7.3 Within thirty days of the effective date of termination (unless an extension is authorized in writing by PROVIDER), CITY shall submit to PROVIDER its claim in detail for the monies owed by PROVIDER for services performed under this contract through the effective date of termination. PROVIDER shall then pay all monies owed to CITY within thirty days.

## **VIII. RIGHTS TO CONTRACTUAL MATERIAL**

- 8.1 Any and all writings, documents, audiotapes, videotapes, or information, in whatsoever form and character, produced by PROVIDER pursuant to the provisions of this contract are the exclusive property of CITY; no such writing, document, audiotape, videotape, or information shall be the subject of any copyright or proprietary claim by PROVIDER.
- 8.2 PROVIDER understands and acknowledges that as the exclusive owner of any and all such writings, documents, audiotapes, videotapes, and information, CITY has the right to use all such writings, documents, audiotapes, videotapes, and information as CITY desires, without restriction.

## **IX. INDEPENDENT CONTRACTOR**

- 9.1 It is expressly understood and agreed by both parties hereto that CITY is contracting with PROVIDER as an independent contractor. The parties hereto understand and agree that CITY shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by PROVIDER under this contract.
- 9.2 The parties hereto further acknowledge and agree that neither party has the authority to bind the other or to hold out to third parties that it has the authority to bind the other.

## **X. SUBCONTRACTING AND ASSIGNMENT**

- 10.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this contract. Compliance by subcontractors with this contract shall be the responsibility of PROVIDER.
- 10.2 Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of PROVIDER, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or extending beyond the termination of this contract.
- 10.3 Except as otherwise stated herein, PROVIDER may not sell, assign, pledge, transfer, or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or any other means, without the prior written consent of CITY. As a condition of such consent, if such consent is granted, PROVIDER shall remain liable for completion of the services outlined in this contract in the event of default by the successor, assignee, transferee, or subcontractor.
- 10.4 Any attempt to transfer, pledge, or otherwise assign this contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should PROVIDER assign, transfer, convey, delegate, or otherwise dispose of any part or all of its right, title, or interest in this contract, CITY may, at its option, cancel this contract and all rights, titles, and interest of PROVIDER shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this contract. The violation of this provision by PROVIDER shall in no event release PROVIDER from any obligation under the terms of this contract, nor shall it relieve or release PROVIDER from the payment of any damages to CITY, which CITY sustains as a result of such violation.

## **XI. CONFLICT OF INTEREST**

- 11.1 PROVIDER acknowledges that it is informed that the Charter of the City of San Antonio and CITY's Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies, or services, if any of the following individuals or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

- 11.2 Pursuant to the subsection above, PROVIDER warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. PROVIDER further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.

## **XII. INSURANCE**

- 12.1 Prior to commencement of any work under this contract, PROVIDER shall furnish to CITY an original completed certificate of insurance or CITY's standard certificate of insurance form. Said form shall be completed by an agent authorized to bind the named underwriter and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate or form must have the agent's original signature, including the signer's company affiliation, title, and phone number, must be mailed directly from the agent to CITY, and must clearly name and identify the subject contract as Agreement to Purchase Used Mobile Telephones. CITY shall have no duty to pay or perform under this contract until such certificate shall have been delivered, and no officer or employee, other than CITY's risk manager, shall have authority to waive this requirement.
- 12.2 PROVIDER's financial integrity is of interest to CITY; therefore, subject to PROVIDER's right to maintain reasonable deductibles in such amounts as are approved by CITY, PROVIDER shall obtain and maintain in full force and effect for the duration of this contract, and any extension thereof, at PROVIDER's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-(vii) or better by A.M. Best Company and/or otherwise acceptable to CITY in the following types and amounts:

Insurance Type	Liability Limits
1. Commercial General (Public) Liability: a. premises operations b. independent contractors c. products/completed operations d. contractual liability	For bodily injury and property damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage.
2. Crime Coverage	\$5,000
3. Environmental Impact and Disposal	\$1,000,000

- 12.3 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY and may make a reasonable request for deletion, revision, or modification of particular policy

terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, PROVIDER shall exercise reasonable efforts to accomplish such changes in policy, and shall pay the cost thereof.

- 12.4 PROVIDER agrees that with respect to the above required insurance, all insurance contracts and certificates of insurance will comply with the following requirements:
- (A) name CITY and its officers, employees, volunteers, agents, and elected representatives as additional insureds (as the interests of each insured may appear), as to all applicable coverage, with the exception of the worker's compensation and employer's liability policies; and
  - (B) provide for an endorsement that any "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on a policy.
- 12.5 PROVIDER will notify CITY in the event of any notice of cancellation, non-renewal, or material change in coverage and shall give such notices not less than thirty days prior to the change, or ten days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement certificate of insurance. All notices shall be given to CITY at the address set out in article XVII.
- 12.6 If PROVIDER fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this contract; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of PROVIDER to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon PROVIDER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order PROVIDER to stop work hereunder and/or withhold any payment which becomes due to PROVIDER hereunder until PROVIDER demonstrates compliance with the requirements hereof.

### **XIII. INDEMNIFICATION**

- 13.1 **PROVIDER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS SAPD, CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, CIVIL AND REGULATORY, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, REGULATORY, PERSONAL OR BODILY INJURY, DEATH, AND PROPERTY DAMAGE MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO PROVIDER'S ACTIVITIES UNDER**



**THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF PROVIDER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, CIVIL AND REGULATORY, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF SAPD, CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF CITY UNDER THIS CONTRACT.**

**13.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY PROVIDER TO INDEMNIFY, PROTECT, AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, PROVIDED, HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF THE CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. PROVIDER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS, AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

**13.3 PROVIDER SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT PROVIDER'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING PROVIDER OF ANY OF ITS OBLIGATIONS UNDER THIS ARTICLE. CITY SHALL HAVE THE RIGHT TO SELECT OR TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY PROVIDER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. PROVIDER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS CONTRACT. IF PROVIDER FAILS TO RETAIN COUNSEL**

WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND PROVIDER SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. CITY SHALL ALSO HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE, WITHOUT WAIVING THE FOREGOING.

- 13.4 CONSULTANT SHALL ADVISE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR PROVIDER KNOWN TO PROVIDER RELATED TO OR ARISING OUT OF PROVIDER'S ACTIVITIES UNDER THIS CONTRACT.
- 13.5 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.
- 13.6 IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF PROVIDER, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR PROVIDER OR ANY SUBCONTRACTOR UNDER WORKER'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

#### **XIV. CHANGES AND AMENDMENTS**

- 14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and PROVIDER.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

#### **XV. ENTIRE AGREEMENT**

- 15.1 This contract and its attachments constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

## **XVI. SEVERABILITY**

- 16.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the city charter, city code, or ordinances of the CITY, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

## **XVII. NOTICES**

- 17.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

### **SAPD**

Mark Knutson  
San Antonio Police Department  
214 W. Nueva  
San Antonio, Texas 78207

### **PROVIDER**

Mike Roselius  
Pace Butler Corporation  
13915 N. Harvey Ave.  
Edmond, Oklahoma 73013

## **XVIII. LAW APPLICABLE**

- 18.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

## **XIX. LEGAL AUTHORITY**

- 19.1 The signer of this contract for PROVIDER represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of PROVIDER and to bind PROVIDER to all of the terms, conditions, provisions, and obligations herein contained.

## **XX. PARTIES BOUND**

- 20.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

## XXI. GENDER

- 21.1 Words of any gender used in this contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## XXII. CAPTIONS

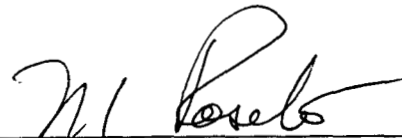
- 22.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

EXECUTED this the 10 day of MAY, 2006.

CITY OF SAN ANTONIO

PACE BUTLER CORPORATION

\_\_\_\_\_  
SHERYL L. SCULLEY  
CITY MANAGER

  
\_\_\_\_\_  
MIKE ROSELIOUS

APPROVED AS TO FORM: 

 CITY ATTORNEY

## ATTACHMENT B

### **REGULATORY COMPLIANCE AND CRIMINAL HISTORY WARRANTY; ACKNOWLEDGEMENT OF FIDUCIARY DUTY OWED BY PROVIDER TO CITY**

**(a) Compliance Histories, Warranty, Fiduciary Duty, Discretionary Termination.**

Contractors or Providers handling potentially hazardous or other regulated materials must demonstrate to CITY's satisfaction that PROVIDER has clean environmental, criminal, and other compliance histories with state, federal, and local agencies or authorities. **PROVIDER warrants to CITY that it, including its advisors, executive and supervisory employees, agents, and representatives, are in good stead with all regulatory authorities that may have interests in or jurisdiction over the work activity or service subject of the contract.** Regulatory interest or jurisdiction may go directly to the contract activity in question, to potential consequences of the activity, or indirectly to any regulated matter which may reflect upon PROVIDER's competency and integrity. CITY relies upon PROVIDER's warranty and shall treat PROVIDER as having a special fiduciary duty to CITY in this respect due to potential for environmental, third party, and other regulatory liabilities which may attend this contract, including but not limited to regulatory criminal responsibility. PROVIDER acknowledges such fiduciary duty to CITY, promising a high standard of performance and best efforts to protect the public interest against consequences of environmental mishap. PROVIDER warrants that no matters pertaining to violations, notices of violation, or notices of regulatory concern are now pending against PROVIDER or those persons (employees/affiliates) of concern mentioned above; and that no civil or criminal litigation, and no manner of enforcement activity, however preliminary, is *pending* against PROVIDER or those persons, regardless of category or class of violation or potential violation. *If any such matters are pending, PROVIDER must reveal and explain those matters in writing to CITY prior to execution of this contract.* If any such matters have been resolved, *during the last five years*, PROVIDER must similarly reveal and explain same to CITY. CITY retains the right to determine, according to its discretion, whether or not a pending, unresolved, or resolved enforcement issue or criminal matter concerning PROVIDER, its operations, or employees, agents, or representatives may impact the responsible status of PROVIDER, i.e., render PROVIDER unqualified, or detract from PROVIDER's competency standing. In reliance on PROVIDER's warranty, CITY reserves to itself the right to terminate this contract, without further obligation upon CITY and without further recourse or remedy for PROVIDER except that CITY shall duly pay PROVIDER for work or services performed to date of termination, should CITY determine, following award of this contract that PROVIDER failed to reveal and explain to CITY's satisfaction any such matters having regulatory or criminal import or implications.

- (b) Criminal Histories - Pending and Resolved; Termination.** PROVIDER must disclose and explain in writing any pending criminal matters associated with its business operation. This disclosure goes to PROVIDER's person, and to all persons

working for PROVIDER in a supervisory, advisory, executive, agency, or in any representative capacity or manner associated with PROVIDER's business enterprise, which persons have any criminal enforcement action pending against him or her, regardless of class or category of alleged violation which may be pending, however preliminary, including investigation. And concerning resolved criminal matters, PROVIDER must make similar written disclosures and explanations for the same category of persons, which disclosures and explanations concern any criminal enforcement action that may have been resolved against such persons during the last five years. Failure to make such disclosures and explanations, with the submission of the PROVIDER's response to CITY's solicitation, shall be grounds for CITY's termination of the contract, should such information come to CITY's attention after award of the contract; in which case PROVIDER shall be without recourse and remedy, except for CITY's payment to PROVIDER for services or work performed up to date of termination.

- (c) **Voidable Contract.** PROVIDER's failure to abide by disclosure and explanation requirements in Sections (a) and (b) above shall render the contract voidable at CITY's discretion, with no compensation due PROVIDER, if concealed or undisclosed violations, or undisclosed or concealed investigations leading to formal criminal charges, are of such portent, in CITY's judgment, as to place CITY in a position of regulatory or third party liability exposure, or shall pose or result in a threat to the public health, safety, or welfare. Any sums paid PROVIDER, in the event of a voided contract, shall be recoverable by CITY, in addition to and cumulative of any other legal or equitable remedies CITY may have. PROVIDER understands CITY shall enjoy the termination and voidable contract remedies set forth in Section (b) and this Section (c) due to the fiduciary duty owing from PROVIDER to CITY and due to CITY's reliance on PROVIDER's warranty of regulatory compliance and clean criminal history.

# ATTACHMENT A

PaceButler Corporation 13915 N Harvey Avenue Edmond OK 73013

April 1, 2006

## Cell Phone Purchase Prices for Victims Advocacy / SAPD

Samsung	Kyocera/Qualcomm	Motorola	Nokia	Sony/Ericsson
C225 \$5.00	1135 \$1.00	A630 \$20.00	1100 \$4.00	T28W \$0.50
R225 \$3.00	1155 \$1.00	C202 \$3.00	1260 \$0.50	T62U \$1.00
MMA900 \$50.00	2035 \$1.25	C250 \$3.00	1261 \$0.50	T68 \$5.00
SCHA310 \$3.00	2135 \$1.25	C331G \$2.00	2115i \$1.00	T226 \$5.00
SCHA530 \$7.50	2235 \$2.00	C332G \$2.00	2116i \$1.00	T237 \$5.00
SCHA570 \$10.00	2255 \$2.00	C333 \$2.00	2126 \$1.00	T290A \$5.00
SCHA610 \$10.00	2325 \$2.00	C341 \$2.00	2260 \$0.50	T300G \$5.00
SCHA630 \$10.00	2345 \$1.00	C343 \$3.00	2270 \$2.00	T306 \$5.00
SCHA650 \$7.50	3035 \$0.50	C350 \$3.00	2285 \$2.00	T310 \$3.00
SCHA670 \$15.00	3225 \$1.00	C370 \$3.00	2600 \$1.00	T316 \$3.00
SCHA790 \$50.00	3245 \$1.00	C450 \$3.00	3100 \$15.00	T600 \$2.00
SCHA890 \$35.00	3250 \$1.00	C650 \$3.00	3120 \$15.00	T608 \$5.00
SCH1600 \$10.00	7135 \$1.00	E310 \$3.00	3155i \$15.00	T610 \$15.00
SCH1730 \$50.00	KE413 \$2.00	E380 \$3.00	3200 \$15.00	T616 \$15.00
SCHN330 \$10.00	KE414 \$2.00	E815 \$40.00	3205 \$7.50	T630 \$15.00
SPHA400 \$1.00	KE424C \$3.00	MPX200 \$10.00	3220 \$15.00	T637 \$15.00
SPHA460 \$3.00	KE433 \$2.00	MPX220 \$50.00	3300 \$5.00	P800 \$35.00
SPHA500 \$5.00	KX1 \$7.50	PEBL U6 \$30.00	3285 \$1.25	P900 \$50.00
SPHA520 \$3.00	KX2 \$35.00	P7382 \$0.50	3360 \$0.50	P910i \$50.00
SPHA560 \$7.50	KX9 \$5.00	P7389 \$0.50	3390 \$5.00	S710a \$50.00
SPHA600 \$7.50	KX13 \$5.00	P8767 \$0.50	3395 \$5.00	Z200 \$10.00
SPHA620 \$10.00	KX16 \$15.00	P250 \$0.50	3560 \$2.00	Z500 \$15.00
SPHA660 \$5.00	KX414 \$3.00	P280 \$0.50	3570 \$5.00	Z520 \$35.00
SPHA680 \$10.00	KX424 \$3.00	T300P \$5.00	3585i \$2.00	Z600 \$15.00
SPHA700 \$30.00	KX433 \$3.00	T720C \$5.00	3586i \$3.00	
SPHA740 \$25.00	KX434 \$3.00	T720G \$5.00	3587i \$3.00	Sanyo
SPHA840 \$20.00	KX440 \$3.00	T725E \$5.00	3588i \$3.00	MM5600 \$25.00
SPHA920 \$50.00	KX444 \$3.00	T730C \$5.00	3589i \$3.00	MM7400 \$20.00
SPH1330 \$1.00	K404 \$3.00	T731C \$5.00	3590 \$5.00	MM8300 \$25.00
SPH1500 \$10.00	K493 \$3.00	V3 RAZR \$50.00	3595 \$7.50	PM8200 \$20.00
SPH1600 \$10.00	K494 \$3.00	V3C \$50.00	3600 \$10.00	RL4920 \$5.00
SPH1700 \$15.00	K9 \$3.00	V60 \$2.50	3620 \$10.00	SCP200 \$5.00
SGHC207 \$5.00	K10 \$3.00	V65P \$7.50	3650 \$10.00	SCP4900 \$2.00
SGHD415 \$35.00	PM325 \$10.00	V66 \$3.00	3660 \$10.00	SCP5000 \$3.00
SGHD500 \$50.00	SE44 \$5.00	V70 \$2.00	5100 \$3.00	SCP5150 \$1.00
SGHE105 \$7.50	SE47 \$5.00	V120C \$0.50	5185 \$1.25	SCP5300 \$3.00
SGHE315 \$10.00	Audiovox	V120E \$2.00	5190 \$1.25	SCP5400 \$3.00
SGHE316 \$10.00	CDM8300 \$3.00	V170 \$3.00	5190 \$1.25	SCP5500 \$20.00
SGHE317 \$10.00	CDM8400 \$3.00	V171 \$3.00	6010 \$7.50	SCP6000 \$1.00
SGHE630 \$20.00	CDM8410 \$3.00	V180 \$7.50	6015i \$7.50	SCP6200 \$1.00
SGHE715 \$15.00	CDM8450 \$3.00	V188 \$7.50	6019i \$7.50	SCP6400 \$1.00
SGHN105 \$3.00	CDM8500 \$2.00	V220 \$10.00	6016i \$5.00	SCP7200 \$4.00
SGHN625 \$5.00	CDM8600 \$3.00	V262 \$7.50	6030 \$7.50	SCP7300 \$5.00
SGHP107 \$20.00	CDM8610 \$3.00	V265 \$10.00	6061 \$7.50	SCP7400 \$15.00
SGHP207 \$25.00	CDM8615 \$3.00	V276 \$10.00	6100 \$15.00	SCP8100 \$10.00
SGHP735 \$30.00	CDM8900 \$10.00	V300 \$15.00	6101 \$20.00	SCP8200 \$15.00
SGHP777 \$50.00	CDM8910 \$10.00	V400 \$15.00	6102 \$20.00	VI2300 \$10.00
SGHS105 \$7.50	CDM8912 \$10.00	V505 \$20.00	6108 \$15.00	LG
SGHS300 \$20.00	CDM8915 \$10.00	V540 \$15.00	6150 \$2.00	AX4270 \$7.50
SGHS307 \$7.50	CDM8920 \$10.00	V551 \$20.00	6170 \$35.00	AX4750 \$12.00
SGHV205 \$10.00	CDM9100 \$1.00	V555 \$20.00	6190 \$0.50	AX5000 \$20.00
SGHV206 \$10.00	CDM9150 \$1.00	V600 \$20.00	6200 \$10.00	C1300 \$5.00
SGHX105 \$5.00	CDM9155 \$2.00	V620 \$50.00	6225 \$10.00	C1500 \$12.50
SGHX426 \$7.50	CDM9500 \$1.00	V810 \$25.00	6230 \$35.00	C2000 \$20.00
SGHX427 \$7.50	CDM9900 \$10.00	V710 \$35.00	6255i \$35.00	F7200 \$15.00
SGHX475 \$15.00	CDM9950 \$10.00	Blackberry	6260 \$50.00	F9100 \$15.00
SGHX495 \$15.00	PPC4100 \$20.00	R-6210 \$0.50	6310i \$5.00	L1150 \$15.00
SGHX497 \$15.00	SMT5600 \$30.00	R-6220 \$0.50	6340 \$1.00	L1200 \$15.00
SGHX640 \$15.00	XV6600 \$50.00	R-6230 \$0.50	6360 \$0.50	L1400 \$15.00
SCH6100 \$1.00	Nextel	R-6280 \$0.50	6370 \$2.00	LG510 \$2.00
SCH8500 \$2.00	i55sr \$1.00	R-6510 \$0.50	6385 \$2.00	G4010 \$5.00
SPHN200 \$0.50	i58sr \$1.00	R-6710 \$0.50	6560 \$2.00	G4011 \$5.00
SPHN240 \$0.50	i60c \$3.00	R-6750 \$0.50	6585 \$10.00	G4015 \$5.00
SPHN300 \$5.00	i90c \$3.00	R-7100 \$20.00	6590 \$5.00	G4020 \$5.00
SPHN400 \$2.00	i95c \$5.00	R-7210 \$5.00	6600 \$30.00	G4050 \$5.00
Siemens	i205 \$2.00	R-7230 \$5.00	6610 \$15.00	LG1010 \$3.00
			6610i \$25.00	LX1200 \$3.00

# **Cell Phone Purchase Prices for Victims Advocacy / SAPD**

A56	\$3.00	i215	\$2.00	R-7250	\$10.00	6620	\$30.00	LX5350	\$5.00
C56	\$3.00	i265	\$5.00	R-7280	\$5.00	6800	\$10.00	LX5450	\$7.50
C61	\$3.00	i275	\$10.00	R-7290	\$10.00	6820	\$15.00	LX5550	\$7.50
CF62	\$5.00	i285	\$3.00	R-7510	\$5.00	6682	\$35.00	PM225	\$10.00
CT66	\$20.00	i305	\$2.00	R-7520	\$15.00	7210	\$10.00	PM325	\$10.00
M46	\$3.00	i315	\$3.00	R-7730	\$10.00	7250	\$20.00	TP5200	\$3.00
M56	\$5.00	i325	\$3.00	R-7750	\$10.00	8260	\$2.00	TP5250	\$3.00
MC60	\$7.50	i355	\$3.00	R-7780	\$10.00	8265	\$2.00	V1125	\$3.00
S40	\$3.00	i415	\$2.00	R-8700	\$40.00	8290	\$3.00	V15225	\$3.00
S46	\$3.00	i450	\$3.00			8390	\$3.00	VX10	\$2.00
S56	\$5.00	i530	\$7.50	NEC		8850	\$3.00	VX2000	\$2.00
S66	\$30.00	i560	\$15.00	NEC525	\$10.00	8860	\$3.00	VX3100	\$3.00
SL56	\$15.00	i605	\$20.00	NEC515	\$5.00	8890	\$3.00	VX3200	\$7.50
SL65	\$15.00	i710	\$10.00	535M	\$15.00	NGAGE	\$10.00	VX3300	\$7.50
SX56	\$10.00	i730	\$10.00			NGAGEQD	\$10.00	VX4400	\$5.00
SX66	\$50.00	i733	\$10.00	Sendo		Panasonic		VX4500	\$7.50
PalmOne		i740	\$10.00	M551	\$3.00	GU87	\$10.00	VX4600	\$7.50
Treo270	\$2.00	i760	\$10.00	Danger		GD55	\$2.00	VX4650	\$12.00
Treo300	\$2.00	i830	\$15.00	Sidekick1	\$5.00	X70	\$15.00	VX4700	\$12.00
Treo600	\$25.00	i836	\$15.00	Sidekick2	\$15.00	X300	\$3.00	VX5200	\$15.00
Treo650	\$50.00	i850	\$20.00	SidekickC	\$10.00			VX6000	\$15.00
Tungsten-V	\$10.00	i860	\$25.00	TouchPoint		Sharp		VX6100	\$15.00
Hitachi		i870	\$50.00	TP1100	\$3.00	GX20	\$15.00	VX7000	\$30.00
SHP300	\$0.50	Startac		Toshiba		TM150	\$20.00	VX8000	\$30.00
G1000	\$20.00	ST7868	\$2.00	VM4050	\$15.00	Mitsubishi		VX8100	\$40.00
				2032SP	\$0.00	M900	\$50.00	VX9800	\$50.00



Agenda item #22

**CITY OF SAN ANTONIO  
POLICE DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Sheryl Sculley, City Manager

**FROM:** William P. McManus, Chief of Police

**SUBJECT:** Authorizing the City Manager, or her designated representative, to execute a contract with Pace Butler Corporation

**DATE:** June 8, 2006

**SUMMARY AND RECOMMENDATIONS**

An ordinance authorizing the execution of a contract with Pace Butler Corporation to refurbish suitable donated mobile telephones for the San Antonio Police Department's Victims Advocacy Office (VAO) and to purchase unsuitable mobile telephones from the City, with funds being deposited into the VAO Trust Fund.

Staff recommends approval

**BACKGROUND INFORMATION**

The City of San Antonio Police Department's Victims Advocacy Office (VAO) collects used mobile phones, via donations, for the purpose of assisting victims of domestic violence. This program is designed to insure that victims have a means of emergency communication when needed. The phones are programmed for emergency communication only and are made available, free of charge, to battered women and other victims of crime who could otherwise not afford mobile phones. This contract term is July 1, 2006 through June 30, 2007.

Donated phones are sorted and forwarded to Pace Butler Corporation (PBC). PBC identifies the mobile phones that function properly, cleans and refurbishes the phones, and returns them to the VAO for distribution. Phones that are deemed unsuitable for this program are then purchased by PBC with the revenue generated being deposited into the VAO Trust Fund. These funds can then be utilized for other victims' assistance programs such as transportation costs, shelter, emergency sundries and supplies, etc.

**POLICY ANALYSIS**

The program will enhance the City's efforts in addressing domestic violence and victims of domestic violence.

### **FISCAL IMPACT**

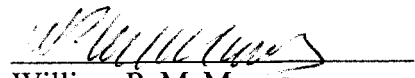
It is estimated that this contract will generate approximately \$2,000 in revenue for the Victims Advocacy Office over the life of the contract.

### **COORDINATION**


This ordinance request has been coordinated with Finance, City Attorney's Office, and the Office of Management & Budget.

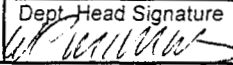
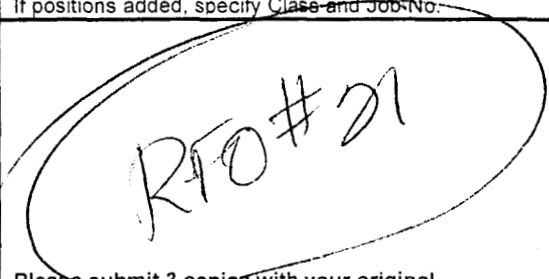
### **SUPPLEMENTARY COMMENTS**

The Discretionary Contracts Disclosure Form is not required.

  
William P. McManus  
Chief of Police

Approved for Council Consideration:

  
Sheryl Sculley  
City Manager

DO NOT TYPE IN THIS SPACE		CITY OF SAN ANTONIO		Request For Ordinance/Resolution	
Approval					
Finance	Budget			Consent <input type="checkbox"/> Individual <input type="checkbox"/>	
Legal Chuck Weir 207-8946	Coordinator			Item No.	
				Ord. No.	
Date: May 29, 2006		Department: Police		Contact Person/Phone #: D/C Rosemary Flammia, x77423	
Date Council Consideration Requested: June 8, 2006		Deadline for Action: June 8, 2006		Dept. Head Signature 	
<b>SUMMARY OF ORDINANCE</b>					
<p>An ordinance authorizing the execution of a contract with Pace Butler Corporation to refurbish suitable donated mobile telephones for the San Antonio Police Department's Victims Advocacy Office (VAO) and to purchase unsuitable mobile telephones from the City, with funds being deposited into the VAO Trust Fund.</p> <p style="text-align: center;">Council Memorandum Must be Attached To Original</p> <p>Other Depts., Boards, Committees Involved (please specify): Finance, City Attorney's Office, and the Office of Management &amp; Budget</p> <p>Contract signed by other party Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>					
<b>FISCAL DATA (If Applicable)</b>					
Amount Expended					
Fund	29611000	SAP GL Account	4502220	Funds/Staffing Budgeted	Yes <input type="checkbox"/> No <input type="checkbox"/>
				Positions Currently Authorized	Yes <input type="checkbox"/> No <input type="checkbox"/>
*Cost Center				Impact on future O & M	
*Internal Order No. 217000000062				If positions added, specify Class and Job No.	
*WBS (Capital Proj.)					
*(Fill out only the field that is appropriate to your council action.)					
Comments:				 Please submit 3 copies with your original	